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**THE BANK OF EAST ASIA LTD
SINGAPORE BRANCH**

v.

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AXIS INCORPORATION BHD (NO 2)

HIGH COURT MALAYA, JOHOR BAHRU
VERNON ONG LAM KIAT JC
[COMPANIES WINDING-UP NO: (MT-1) 28-1-2009]
7 JULY 2009

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COMPANY LAW: *Winding-up - Petition, setting aside - Petition predicated upon judgment obtained in foreign jurisdiction - Prerequisites - Whether judgment to be registered in Malaysia - Failure to register - Whether petition fatally flawed - Whether to be set aside - Companies Act 1965, s. 218 - Reciprocal Enforcement of Judgments Act 1958, ss. 4, 7*

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WORDS & PHRASES: *“Proceedings” - Section 7, Reciprocal Enforcement of Judgments Act 1958 - Whether inclusive of winding-up proceedings*

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The petitioner bank in this case had petitioned to wind up the respondent pursuant to s. 218 of the Companies Act 1965. The petition was founded on a judgment in default obtained in the High Court in Singapore, a reciprocating country under the Reciprocal Enforcement of Judgments Act 1958 (‘REJA’). The petitioner however had not registered the Singapore judgment in Malaysia pursuant to s. 7 of REJA, and that being so, the respondent argued, in the motion to strike out the petition herein, that the non-registration was fatal and rendered the petition manifestly unsustainable and an abuse of process within the meaning of O. 18 r. 19(1)(d) Rules of the High Court 1980 (‘RHC’). The petitioner retorted that the motion to strike out itself was an abuse of process as the respondent ought to have raised the issues at the hearing of the petition. That aside it was argued that: (i) the issue of foreign judgment was irrelevant to the winding-up proceeding, as the petition was not based on any judgment of court but on the respondent’s inability to pay its debts as and when the same fell due; and (ii) a winding-up proceeding is not an execution proceeding or an action to recover a judgment sum within the meaning of s. 7 of REJA, with the

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result that there was no need to register the foreign judgment in question. The critical question that arose was whether the petitioner, having obtained a judgment against the respondent in the High Court in Singapore but having not registered it in Malaysia, could properly and validly institute a winding-up petition against the respondent.

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Held (striking out petition):

(1) The line of authorities is clear as to the power of the court to strike out a winding-up petition under O. 18 r. 19 RHC and under the inherent powers of the court under O. 92 r. 4 RHC where a petition is obviously unsustainable for want of cause of action or is plainly vexatious or frivolous or an abuse of process of court. The petitioner's preliminary objection that the respondent's application is an abuse of process and that the issues raised should be raised at the hearing of the petition is unsustainable. (para 14)

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(2) Under s. 7 of REJA, no proceedings for the recovery of a sum under the Singapore judgment shall be entertained, other than by way of registration of the said judgment. Further, the meaning of the word "proceedings" in s. 7 and subs. 2(b) of s. 4 of REJA is non-exclusive and include proceedings in any action or matter including winding-up proceedings. (paras 15 & 19)

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(3) In the present case, the right to take proceedings on the Singapore judgment will only accrue to the petitioner upon the registration of the said judgment in Malaysia under REJA. The registration of the Singapore judgment is a fundamental prerequisite without which the petitioner is devoid of the requisite right to take any proceedings on the judgment. In the circumstances, the winding-up petition is an abuse of process and bad in law. (*Re Cheah Theam, ex p Equiticorp Finance Group Ltd & Anor* (foll); *Re Raju Jayaram Kerpaya ex p Associated Asian Securities (Pte) Ltd* (foll). (paras 20 & 22)

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Case(s) referred to:

Ansa Teknik (M) Sdn Bhd v. Cygal Sdn Bhd [1989] 2 MLJ 423 (*refd*)

Antara Elektrik Sdn Bhd v. Bell & Order Bhd [2000] 6 MLJ 385 (*refd*)

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC (*refd*)

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Boey Oi Leng v. Trans Resources Corporation Sdn Bhd [2002] 1 CLJ 405 HC (*refd*)

- A** *Buildcon-Cimacco Concrete Sdn Bhd v. Filotek Trading Sdn Bhd* [1999] 4 CLJ 135 HC (**refd**)
Chip Yew Brick Works Sdn Bhd v. Chang Heer Enterprise Sdn Bhd [1988] 2 CLJ 424; [1988] 1 CLJ (Rep) 5 SC (**refd**)
Dato' Ibrahim Hj Ismail & Anor v. Onstream Marine Sdn Bhd [1998] 4 CLJ 526 HC (**refd**)
- B** *Datuk Mohd Sari Datuk Hj Nuar v. Idris Hydraulic (M) Bhd* [1996] 3 CLJ 877 HC (**refd**)
Fairview Schools Bhd v. Indrani Rajaratnam & Ors [1998] 1 CLJ 285 CA
In re a Judgment Debtor [1939] 1 Ch 601 (**refd**)
In re Laxon & Co [1892] 3 Ch 31 (**refd**)
- C** *Intrakota Komposit Sdn Bhd & Anor v. Sogelease Advance (M) Sdn Bhd* [2004] 8 CLJ 276 HC (**refd**)
Jurupakat Sdn Bhd v. Kumpulan Good Earth (1973) Sdn Bhd [1988] 2 CLJ 649; [1988] 1 CLJ (Rep) 618 HC (**refd**)
Malaysia Air Charter Company Sdn Bhd v Petronas Dagangan Sdn Bhd [2000] 4 CLJ 437 FC (**refd**)
- D** *Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals* [2001] 3 CLJ 248 CA (**refd**)
NCK Wire Products Sdn Bhd v. Konmark Corp Sdn Bhd [2001] 6 MLJ 57 (**refd**)
PT Anekapangan Dwitama v. Far East Food Industries Sdn Bhd [1998] 4 CLJ Supp 437 HC (**refd**)
- E** *Re a company (No 005685 of 1988), ex parte Schwarcz (No 2)* [1989] BCLC 427 (**refd**)
Re Cheah Theam Swee, ex p Equiticorp Finance Group Ltd & Anor [1996] 2 SLR 76 (**fol**)
- F** *Re Lim Szu Ang, Exp Kewangan Utama Berhad* [2005] 7 CLJ 23 HC (**refd**)
Re Lo Siong Fong [1994] 1 LNS 188 (**refd**)
Re Raju Jayaraman Kerpaya Ex P Associated Asian Securities (Pte) Ltd [1999] 5 CLJ 23 HC (**fol**)
Sri Binaraya Sdn Bhd v. Golden Approach Sdn Bhd [2000] 7 CLJ 320 HC (**refd**)
- G** *Sri Hartamas Dvpt Sdn Bhd v. MBF Finance Bhd* [1992] 1 CLJ 637; [1992] 1 CLJ (Rep) 303 SC (**refd**)
Tan Kim Hor & Ors v. Tan Heng Chew & Ors [2009] 2 CLJ 242 CA (**refd**)
- H** *Teck Yow Brothers Hand-Bag Trading Co v. Maharani Supermarket Sdn Bhd* [1989] 1 CLJ 258; [1989] 2 CLJ (Rep) 555 HC (**refd**)
Weng Wah Construction Co Sdn Bhd v. Yik Foong Development Sdn Bhd [1994] 3 CLJ 511 HC (**refd**)

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Legislation referred to:

Companies Act 1965, ss. 176(10), (10A), 218(1)(e), (2)(a), (c), 219
Reciprocal Enforcement of Judgments Act 1958, ss. 4(2)(b), 7
Rules of the High Court 1980, O. 18 r. 19(1)(d), O. 45, O. 67,
O. 92 r. 4

Foreign Judgments (Reciprocal Enforcement) Act 1933 [UK], ss. 2, 6(2)

Other source(s) referred to:

Walter Woon, Andrew Hicks, *The Companies Act of Malaysia – An
Annotation*, p 43

Stroud's Judicial Dictionary of Words And Phrases, 4th edn, p 2126, para 20

*For the petitioner – Wong Rhen Yen (Leslie Looi with him); M/s Dennis Nik
& Wong*

*For the respondent – Dr Wong Kim Fatt (Cheah Sin Chin with him);
M/s Adnan Sundra & Low*

Reported by Wan Sharif Wan Ahmad

JUDGMENT**Vernon Ong Lam Kiat JC:**

[1] The petitioner, The Bank Of East Asia Limited Singapore Branch presented a winding-up petition against the respondent Axis Incorporation Berhad under s. 218 of the Companies Act 1965 ('the Act') on the ground that the respondent was unable to pay its debts. By a notice of motion (encl. 29) the respondent is applying to strike out the petition.

Brief Account Of The Facts

[2] The respondent is a public company listed in Bursa Malaysia with a paid-up capital of RM152,906,791. On 21 November 2008 the petitioner obtained a judgment in default of appearance against the respondent for US\$2,422,277.23 together with interest and costs in the High Court in the Republic of Singapore. The foreign judgment was not registered in Malaysia. On 2 December 2008 the petitioner issued a notice under s. 218 of the Act against the respondent. On 2 January 2009 the petitioner presented a winding-up petition against the respondent. On 19 February 2009 the petitioner obtained an *ex parte* order for the appointment of a provisional liquidator against the respondent. On 12 March 2009 the petitioner served the petition and the *ex parte* order on the

- A respondent. On 18 March 2009 the respondent filed an application to set aside the *ex parte* order and to remove the provisional liquidator. On 7 April 2009 the court set aside the *ex parte* order. Meanwhile on 14 April 2009 the respondent obtained a restraining order under s. 176(10) and (10A) of the Act at the
- B KL High Court to restrain all further proceedings against the respondent for a period of nine months.

Respondent's Submission

- C [3] Learned counsel for the respondent submitted that a winding-up petition may be struck out under O. 18 r. 19(1)(d) of the Rules of the High Court 1980 ('RHC') or under the inherent jurisdiction of the court under O. 92 r. 4 RHC (*Jurupakat Sdn Bhd v. Kumpulan Good Earth (1973) Sdn Bhd* [1988] 2 CLJ 649; [1988] 1 CLJ (Rep) 618). Independent of the RHC, the power to strike out the winding-up petition is also within the jurisdiction of the court (*Re Lo Siong Fong* [1994] 1 LNS 188; *Dato' Ibrahim bin Hj Ismail v. Onstream Marine Sdn Bhd* [1998] 4 CLJ 526; *Fairview Schools Bhd v. Indrani a/p Rajaratnam* [1998] 1 CLJ 285 CA; *Tan Kim Hor & Ors v. Tan Heng Chew & Ors* [2003] 1 CLJ 634 CA).
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- F [4] The petitioner had filed the petition in violation of the express statutory provisions of s. 7 of the Reciprocal Enforcement of Judgments Act 1958 ('REJA'). The petition is manifestly unsustainable and/or is an abuse of process and should be struck out forthwith in the interest of justice (*Re a company (No. 005685 of 1988)*, *ex parte Schwarcz (No. 2)* [1989] BCLC 427 at 430; *Datuk Mohd Sari bin Datuk Hj Nuar v. Idris Hydraulic (M) Bhd* [1996] 3 CLJ 877; *Ansa Teknik (M) Sdn Bhd v. Cygal Sdn Bhd* [1989] 2 MLJ 423).
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- H [5] Learned counsel also submitted in the judgment of this court of 7 April 2009 the court set aside the *ex parte* order on the ground that the petitioner had failed to register the foreign judgment under REJA. In view of the fact that the non-registration was fatal to the *ex parte* order it must follow that the petition as it stands is wholly unsustainable and is an abuse of process and must be struck out.
- I [6] Learned counsel submitted that the petition is premised upon a Singapore judgment which has not been registered under REJA. REJA applies to Singapore as it is a reciprocating country. The restriction under s. 7 REJA means that bankruptcy proceedings

could not issue upon a judgment of a reciprocating country (*Re Raju Jayaraman Kerpaya Ex P Associated Asian Securities (Pte) Ltd* [1999] 5 CLJ 23). Learned counsel also referred to the position in the United Kingdom in the case of *In re a Judgment Debtor* [1939] 1 Ch 601. As no attempts have been made by the petitioner to register the foreign judgment in Malaysia no proceedings for the recovery of a sum payable under a foreign judgment may be taken out in Malaysia.

[7] It was also submitted that s. 7 REJA applies to all proceedings for the recovery of a sum payable under a foreign judgment. As the petition is made upon demand for a judgment debt, such winding-up proceedings are made with a view of recovering the judgment debt. An analogy was drawn with bankruptcy proceedings (*Re Lim Szu Ang, Exp Kewangan Utama Berhad* [2005] 7 CLJ 23; *Intrakota Komposit Sdn Bhd & Anor v. Sogelease Advance (M) Sdn Bhd* [2004] 8 CLJ 276). Accordingly, the petition as it stands is manifestly unsustainable and is an abuse of process of the court and must be struck out in the fact of 7 April 2009 order of this court.

Petitioner's Reply

[8] Learned counsel for the petitioner raised a preliminary objection contending that the respondent's notice of motion is an abuse of process of this court. The issues raised in this application should be raised at the hearing of the petition (*Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals* [2001] 3 CLJ 248; *Antara Elektrik Sdn Bhd v. Bell & Order Bhd* [2000] 6 MLJ 385). This is not a plain and obvious case for the petition to be struck out (*Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; *Boey Oi Leng v. Trans Resources Corporation Sdn Bhd* [2002] 1 CLJ 405; *Sri Binaraya Sdn Bhd v. Golden Approach Sdn Bhd* [2000] 7 CLJ 320).

[9] It was also submitted that a winding-up proceeding is not an execution proceeding or an action to recover a judgment sum. The issue of foreign judgment has no relevance to the winding-up proceeding as it is not based on any judgment of a court. It is based on the respondent's inability to pay its debts as and when they fall due. There is no need to register the foreign judgment in Malaysia (*Maril-Rionebel, supra*). The petition is based on s. 218(1)(e) of the Act read with s. 218(2)(a) and or s. 218(2)(c)

- A where no judgment is required (*The Companies Act of Malaysia – An Annotation* (Walter Woon, Andrew Hicks); *Maril-Rionebel, supra*; *Boey Oi Leng, supra*; *Weng Wah Construction Co Sdn Bhd v. Yik Foong Development Sdn Bhd* [1994] 3 CLJ 511; *Teck Yow Brothers Hand-Bag Trading Co v. Maharani Supermarket Sdn Bhd* [1989] 1 CLJ 258; [1989] 2 CLJ (Rep) 555; *Malaysia Air Charter Company Sdn Bhd v. Petronas Dagangan Sdn Bhd* [2000] 4 CLJ 437). The petition is based on a debt which is evidenced *inter alia* by (i) a judgment of default obtained in the High Court of the Republic of Singapore and a certificate of indebtedness. It was also
- C contended that the presumption of insolvency is raised as the respondent has not disputed the petitioner's s. 281 notice. Accordingly, the burden has shifted on the respondent to rebut this presumption (*The Companies Act of Malaysia – An Annotation* (Walter Woon, Andrew Hicks) p 43; *PT Anekapangan Dwitama v. Far East Food Industries Sdn Bhd* [1998] 4 CLJ Supp 437; *NCK Wire Products Sdn Bhd v. Konmark Corp Sdn Bhd* [2001] 6 MLJ 57). Further according to the respondent's quarterly report for the three month period ended 30 September 2008 to BURSA the respondent was and is unable to pay its debts (*Teck Yow Brothers Hand-Bag Trading Company, supra*). In addition the respondent has admitted to the debt. As a creditor the petitioner has locus to present the winding-up petition and no judgment is required. The respondent has failed to show that it has a substantial *bona fide* dispute of the debt (*Chip Yew Brick Works Sdn Bhd v. Chang Heer Enterprise Sdn Bhd* [1988] 2 CLJ 424; [1988] 1 CLJ (Rep) 5; *NCK Wire Products, supra*). The test for winding-up proceedings is the commercial insolvency test which is the respondent's ability to pay its debts when it is due. It has been demonstrated that the respondent is unable to pay the said debt after failing to settle its
- G debt within 21 days after service of the statutory demand (*Sri Hartamas Dvpt. Sdn Bhd v. MBF Finance Bhd* [1992] 1 CLJ 637; [1992] 1 CLJ (Rep) 303). Finally, it was contended that the respondent is commercially insolvent as seen by their announcement to the BURSA Malaysia and the fact that the respondent is undertaking a debt restructuring exercise under s. 176 of the Act.
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Findings Of The Court

- I [10] The petitioner's preliminary objection is that the respondent's application is an abuse of process and that the issues raised should be raised at the hearing of the petition. In *Jurupakat Sdn Bhd v. Kumpulan Good Earth (1973) Sdn Bhd* [1988] 2 CLJ 649;

[1988] 1 CLJ (Rep) 618, the High Court struck out a winding-up petition under O. 18 r. 19(1)(d) of the RHC and under the inherent jurisdiction of the Court. In *Re Lo Siong Fong* [1994] 1 LNS 188 the High Court held that whilst O. 18 r. 19 of the RHC *per se* has no application to a s. 218 petition, there is, however, no doubt that the court has the inherent jurisdiction to strike out a petition for any abuse of its process.

[11] In *Dato' Ibrahim Hj Ismail & Anor v. Onstream Marine Sdn Bhd & Ors* [1998] 4 CLJ 526 the petitioners petitioned for the winding-up of the first respondent company pursuant to s. 218(1)(i) of the Act on the just and equitable ground. The second, third and fourth respondents filed a notice of motion for the petition to be struck out pursuant to and under the inherent jurisdiction of the court on the ground that it was an abuse of process of the court under O. 92 r. 4 of the RHC. In striking out the petition Haidar Mohd Noor J (later CJM) said at p. 537:

The issue now is whether the court should exercise its discretionary power under its inherent jurisdiction to strike out the petition without a trial? In this respect I should perhaps bear in mind the cautionary words of Lord Templeton in *Williams and Hubert v. W. & H. Trade Marks (Jersey) Ltd.* [1986] AC 368 at pp. 435-436:

... if an application to strike out involves a prolonged and serious arguments the judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubts about the soundness of the pleadings but, in addition, is satisfied that striking out will obviate the necessity for a trial or will subsequently reduce the burden of preparing for trial or the burden of the trial itself.

I am satisfied that the second to the fourth respondents have shown that the petitioner's claims are manifestly unsustainable or an abuse of process and justice requires that the petition be struck out forthwith (see *Re Ringtower Holdings plc* [1989] 5 BCC p. 84).

In the circumstances, I hereby strike out the petition with costs.

[12] In *Fairview Schools Bhd v. Indrani Rajaratnam & Ors* [1998] 1 CLJ 285 CA the proposed interveners filed an application for leave to intervene in the appeal. As there was nothing in the Companies (Winding-up) Rules 1972 permitting intervention the issue before the Court of Appeal was whether the RHC were

A irrelevant. If so, then the proposed intervener's application would be unsustainable. In this regard Mahadev Shankar JCA said at p. 307:

B ... Consequently we think that where the Winding-up Rules make specific provision for a particular matter it would exclude a parallel provision in the rules of the court but where the Winding-up Rules are silent on a matter which is pending before the court, the court must apply its own procedure where express provision exists. If not it can always resort to O. 92 r. 4 of the RHC.

C [13] In *Tan Kim Hor & Ors v. Tan Heng Chew & Ors* [2003] 1 CLJ 634 the Court of Appeal adopted the views expressed in *Buildcon-Cimacco Concrete Sdn Bhd v. Filotek Trading Sdn Bhd* [1999] 4 CLJ 135 of the undesirability to adopt a striking out procedure in a winding-up petition since it could cause further delay rather than expedite the disposal of such matters. However, at p. 647 Richard Malanjum JCA (now CJSS) said:

E We find the philosophy implicit in the above statements convincing and adopt it in affirming the view that an application made pursuant to O. 18 r. 19 of the RHC to strike out a petition presented under s. 218 of the Act is undesirable and should be discouraged. In our view the use of that procedure in such winding-up proceedings produces only delay in the adjudication of the matter. *Of course we are not saying that it is totally inapplicable. There may be an instance where such a petition is obviously unsustainable for want of cause of action or that it is plainly vexatious or frivolous or even an abuse of process. In such a case O. 18 r. 19 could be resorted to.* (emphasis added)

G [14] The principle that the court has the power under O. 18 r. 19 of the RHC to strike out a winding-up petition was further restated by the Court of Appeal in *Tan Kim Hor & Ors v. Tan Heng Chew & Ors* [2009] 2 CLJ 242 at the hearing of an appeal by the petitioner against the decision of the High Court judge allowing the respondent's 3rd application to strike out the petition. The line of authorities is clear as to the power of the court to strike out a winding-up petition under O. 18 r. 19 of the RHC and under the inherent powers of the court under O. 92 r. 4 of the RHC where a petition is obviously unsustainable for want of cause of action or is plainly vexatious or frivolous or an abuse of process of court. The petitioner's preliminary objection

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that the respondent's application is an abuse of process and that the issues raised should be raised at the hearing of the petition is unsustainable.

[15] Turning to the respondent's main ground. In the present case the winding-up petition is founded on a judgment in default obtained in the High Court in the Republic of Singapore. The REJA provides for the reciprocal enforcement of judgments of the reciprocating country of the original court. Under the First Schedule of REJA, Singapore is a reciprocating country. Accordingly, the judgment in question is a judgment which can be registered. Pursuant to s. 7 of REJA no proceedings for the recovery of a sum under the said judgment shall be entertained, other than by way of registration of the said judgment. Section 7 REJA provides as follows:

7. Judgments which can be registered not to be enforceable otherwise

No proceedings for the recovery of a sum payable under a judgment of a superior court, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in Malaysia.

[16] There is no evidence to show that the petitioner has taken any steps or made any attempts whatsoever to register the Singapore judgment in Malaysia. Be that as it may, can it be said that the words 'proceedings for the recovery of a sum payable under a judgment' mean and include the winding-up proceedings instituted against the respondent. If it does, then clearly the Singapore judgment must be registered before the petitioner may take up proceedings for the recovery of the sum payable under the Singapore judgment.

[17] The issue to be determined is whether the word "proceedings" in s. 7 REJA includes the presentation of a winding-up petition. In this regard it is also pertinent to note the context of the word "proceedings" in subsection (2) of s. 4 REJA which sets out the effect of registration of a judgment as follows:

(2) Subject to the provisions of this Act with respect to the setting aside of registration:

- (a) a registered judgment shall, for the purposes of execution, be of the same force and effect,

- A (b) **proceedings may be taken on a registered judgment,**
- (c) the sum for which a judgment is registered shall carry interest, and
- B (d) the registering court shall have the same control over the execution of a registered judgment,
- as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:
- C Provided that execution shall not issue on the judgment so long as, under this Part and the rules of court made for the purposes thereof, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined. (emphasis added)
- D In the case of *In re A Judgment Debtor* [1939] 1 Ch 601 the Court of Appeal considered the import of s. 6 and subsection (2) of s. 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1933. Section 6 provides: “No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this
- E part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in the United Kingdom.” Subsection (2) of s. 2 which provides for the effect of registration states: “Subject to the provisions of this
- F Act with respect to the setting aside of registration: (a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and (b) proceedings may be taken on a registered judgment; and (c) the sum for which a judgment is registered shall carry interest; and (d) the registering court shall
- G have the same control over the execution of a registered judgment; as if the judgment had been a judgment originally given in the registering court and entered on the date of registration.” The Court of Appeal said that Parliament was intending by the Act to provide that the only method of enforcing foreign judgments should be by registration. That being so, the holder of
- H a registered judgment can do whatever s. 2 tells him that he can do. In declining to read into the language by implication limiting words which would cut down its effect the Court of Appeal held that the word “proceedings” quite clearly includes proceedings by way of bankruptcy proceedings initiated by a bankruptcy notice or
- I otherwise. According to *Strouds Judicial Dictionary of Words And*

Phrases (4th ed) p 2126 para. (20) the word “proceedings” has been defined to include a winding-up petition. Similarly in *In re Laxon & Co* [1892] 3 Ch 31 the Court of Appeal interpreted the word “proceedings” to include a winding-up petition on which no order has been made.

[18] In Malaysia the word “proceedings” is defined in the Companies (Winding-Up) Rules 1972 as the proceedings in the winding-up of a company under the Act. Such proceedings commence upon the presentation of the winding-up petition (see s. 219 of the Act). In the present case as the petition is made upon a statutory demand for a judgment debt the winding-up proceedings are made with the view of recovering the judgment debt. This is so even though it is not an enforcement within the meaning of O. 45 of the Rules of the High Court 1980.

[19] The issue as to whether a bankruptcy proceeding is an enforcement of a judgment came up in *Re Lim Szu Ang, ex p Kewangan Utama Bhd* [2005] 7 CLJ 23. In that case the bankruptcy notice and creditor’s petition were set aside on the ground that the judgment upon which the debt was claimed was statute barred. At p. 27 Abdul Aziz Rahim JC (now J) said:

Thus in my view the bankruptcy proceeding is an action on a judgment but not an enforcement of the judgment within the meaning of O. 45 r. 1 RHC 1980. An action on a judgment is not the same as enforcing a judgment. In enforcing a judgment a party in whose favour the judgment is given is taking a proceeding against the adjudged party in order to force that other party to satisfy the terms of the judgment in accordance with the rules relating to the enforcement of judgments. But in an action on a judgment the party that obtained the judgment is not enforcing the judgment as understood under the rules. Instead the party concerned is exercising his rights arising from the judgment, and given to him under the rules or a written law, by a separate and distinct action or proceedings. However the outcome of such action or proceedings may result in the satisfaction of the judgment by the party against whom the judgment is obtained.

... The word ‘suit’ is defined in s. 2 of the Sarawak Ordinance as ‘includes any action or proceedings’. To my mind the definition is non-exhaustive and the term ‘proceedings’ may and could include bankruptcy proceedings.

- A In the same manner an analogy may be drawn with the meaning of ‘proceedings’ in s. 176(10) of the Companies Act 1965. Under that provision the power to restrain ‘proceedings’ includes a restraint on winding-up proceedings. In *Intrakota Komposit Sdn Bhd & Anor v. Sogelease Advance (M) Sdn Bhd* [2004] 8 CLJ 276 Abdul
- B Malik Ishak J (now JCA) said at p. 287:
- C ... s. 176(10) of the Companies Act 1965 allows an application to be made in order to “restrain further proceedings” prior to the winding-up where a “compromise or arrangement has been proposed”. The court may be persuaded to adjourn a winding-up petition if the company can show solid evidence that a rescue attempt is under way. The court’s power to restrain proceedings is all encompassing. It extends to restraining the “proceedings in any action or matter” (*Re Artistic Color Printing Co* [1880] 14 CH D 502, 504, 505).
- D Accordingly the court takes the view that the meaning of the word “proceedings” in s. 7 and subsection (2)(b) of s. 4 REJA is non-exhaustive and includes proceedings in any action or matter including winding-up proceedings.
- E [20] In the present case the right to take proceedings on the Singapore judgment will only accrue to the petitioner upon the registration of the said judgment in Malaysia under the REJA. The registration of the Singapore judgment is a fundamental prerequisite without which the petitioner is devoid of the requisite
- F right to take any proceedings on the judgment. In *Re Cheah Theam Swee, ex p Equiticorp Finance Group Ltd & Anor* [1996] 2 SLR 76 the judgment debtor applied to set aside a bankruptcy notice at the Singapore High Court. The bankruptcy notice was based on a judgment of the New Zealand High Court which had earlier
- G been registered in the Singapore High Court under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264). It was contended, *inter alia*, that a judgment obtained in a Commonwealth country and registered in accordance with the said act could not form the basis of a bankruptcy notice. The Singapore High Court
- H ruled that a bankruptcy notice could be founded upon a judgment registered under the said act.
- I [21] In *Re Raju Jayaram Kerpaya Ex P Associated Asian Securities (Pte) Ltd* [1999] 5 CLJ 23 the judgment creditor obtained leave to register a judgment of the High Court of the Republic of Singapore. Pending the registration of the said judgment the

judgment creditor took out a bankruptcy notice against the judgment debtor. On the hearing of application by the judgment debtor the bankruptcy notice was set aside by the senior assistant registrar. On appeal to the High Court Abdul Hamid Mohamad J (later CJ) found that the judgment creditor failed to comply with the procedure for the registration of the judgment as provided by O. 67 of the RHC. The bankruptcy notice was consequently premature and void.

[22] In the present case the petition is founded on the Singapore judgment (see para 6 of petition). The petition was made upon a demand for a judgment debt under the Singapore judgment (see s. 218 notice). In the premises, the winding-up proceedings are made with the view of recovering the said judgment debt. In order for such proceedings to be validly instituted, the Singapore judgment must be registered in Malaysia. The winding-up petition fell far short of the mandatory requirements of the REJA in that the petitioner did not even obtain an order for leave to register the Singapore judgment. In the circumstances the winding-up petition is premature and bad in law. A winding-up petition which is bad in law is also an abuse of process and it cannot be entertained. For the foregoing reasons the petition is struck out with costs.

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